

Terrorist and Disruptive Activities (Control and Punishment) Ordinance, 2004

*Ministry of law, justice, and parliamentary affairs
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Preamble

Whereas it is expedient to enact legislation for controlling terrorist and destructive acts in order to maintain peace and order in the kingdom of Nepal and ensure the security of the common people and the session of the parliament is not place, His Majesty the King Gynandra Bir Bikram Shah Dev has issued this ordinance.

1. Short title and commencement

- 1. This ordinance shall be known as the Terrorist and Destructive acts (Control and Punishment) Ordinance 2004.
- 2. It shall come into force at once..

2. Definitions

Unless otherwise meant with reference to the subjects or context, in this Act,

- (a) **Weapon** means rifles, guns, cannons, pistols, revolvers, Machine guns, rockets, rocket-launchers or similar other means or machine or spears, knives, kukris or other lethal weapons with or without sharp edge which can cause any damage to (human) bodies.
- (b) **Ammunition** includes fog signals, fuse gunpowder, capes mortars, shots detonators, cartridges similar other ammunition.
- (c) **Bomb** means a grenade landmine ,or any other weapon containing any type of explosive, or any type of material that explodes or cause explosion, which is made from any types of materials or means, made to explode by any other means or automatically and used for military or non military purposes.
- (d) **Explosives** means TNT Amatol Barstool, Pentolite, RDX ,Tropex, plastic explosives dynamites gunpowder, nitroglycerine gelignites, semites sellite guncotton blasting powder, fulminates of mercury or any other similar or other materials which are produced or used with the objectives of causing an impact through explosion.
- (e) **Poisonous substance** means any type of poison or solid or liquid substance mixed with such poison, the term includes any type or poisonous gas or smoke.
- (f) **Security personnel** means the police, the armed police or the Royal Nepali Army, or any other person deputed by his Majesty' s Government for the prevention and control of terrorist and destructive acts.

(g) **Terrorist and destructive Acts** means the terrorist and destructive acts mentioned in section 3.

(h) **Terrorist** means a person or group engaged in any of the terrorist and destructive acts mentioned in section 3.

(i) **Accomplices** mean the following persons:

1. Persons who are in contact with and extend cooperation to any person or group engaged in terrorist and destructive acts.
2. Persons who furnish any information to persons or group engaged in terrorist and destructive acts or those who disseminate information of persons or groups engaged in terrorist and destructive acts.
3. Persons who intentionally help directly or otherwise, persons or groups engaged in terrorist and destructive acts by providing them with financial or material assistance or shelter except when they are forced to do so.

(j) **Property** means any governmental, public or private movable or immovable property within or outside the kingdom of Nepal.

(k) **Informer** means a person who provides or helps to provide information to security personnel and His Majesty's Government in relation to terrorist and destructive acts and explosives.

(l) **Security Officer** means the Chief District Office or any Gazetted officer-employee of His Majesty's Government designated by His Majesty's Government by notification in Nepal Gazette (Rajpara).

(m) **Order** means an order issued by His Majesty's Government or the Security Officer.

3 Terrorist and Destructive Crimes

(1) Anyone who commits any of the following acts shall be deemed to have committed a terrorist and destructive crime;

(a) Any act of damaging or destroying property at any place, or formulation plans to do so, or lacking human life or crippling or insuring human beings at such places, by using any kind of weapons, bombs, explosives or any other means or machine or any act of causing physical or mental harm through arson or otherwise, or any act of taking human life crippling or otherwise causing harm to human life by using poisonous substances in goods of daily consumption or at public places, or any act of terrorizing the common people or people in motion or assembled by committing any of the abovementioned acts, with the objective of affecting or hurting the sovereignty or integrity of the kingdom of Nepal, or security or peace and order of the Kingdom of Nepal or any of its parts, or security of foreign based Nepali diplomatic missions or property or,

(b) Any act of using force or terrorizing anyone in any place or vehicle or abducting from such place or vehicle or anyone traveling in such vehicle along with or without the vehicle, by threatening to kill, cripple, injure or otherwise harm anyone by using or threatening to use any of the materials mentioned in Clause (a), or any other material

or means other than such materials, or terrorizing anyone through such acts in order to fulfill the objective mentioned in Clause (a).

- (c) Acts of producing, distributing, accumulating, transporting, importing, exporting, selling, carrying or installing any kind of weapons, bombs, explosives or poisonous substances, or intentionally helping in any such acts, with the objective mentioned in Clause (a) or (b).
 - (d) Acts such as gathering people and providing them with training with the objective mentioned in Clause (a) or (b).
 - (e) Acts of extorting cash or goods or looting property with the objectives mentioned in this sub-section.
- (2) In case anyone attempts or conspires to commit a terrorist and destructive act, or abets or compels others to do so, or assembles more than one person to gang or group to commit such acts or issues orders and instructions to commit such acts or participates in such acts with or without obtaining remuneration, or publicizes such acts or obstructs the governmental communication system, he too shall be deemed to have committed a terrorist and destructive crime.

Provided that no action that anyone has been forced to take shall be deemed to be a terrorist and destructive crime.

- (3) Persons who commit any of the acts mentioned in sub-Section (1) or (2) shall be subjected to action and punishment as provided for in this Act.

4. Extra-Territorial Application of the Act

Even if any person engage in terrorist and destructive acts has committed a crime targeting the kingdom of Nepal or Nepali citizen or any property of the Kingdom of Nepal by residing outside the Kingdom of Nepal. He shall be deemed to have committed the crime from within the Kingdom of Nepal and subjected to action and punishment under this Act.

5. Special Powers to Check Terrorist and Destructive Act

Notwithstanding anything contained in current law, His Majesty's Government may issue orders for taking all or any of the following actions to check terrorist and destructive crimes in all or any of the parts of the Kingdom of Nepal while a Security Officer may do so to check such crimes in his area:

- (a) Arrest anyone on the basis of adequate and reasonable suspicion that he is engaged in terrorist and destructive acts, and furnish information of such arrests along with reasons thereof.
- (b) Search at any time the house, shop, warehouse, means of transport or any other places of any person after information him in advance in case it is suspected that illegal arms and ammunition, bombs or explosives are stored or any suspicious person connected with terrorists is hiding there, and issue receipts of goods recovered, if any in the course of the search.
- (c) Search at any place or on any of thoroughfare anyone's person or belonging or the means or vehicle he is using in order to check terrorist and destructive acts.

- (d) Use necessary forces if anyone obstructs or opposes the act of making arrests under Clause (a) or conducting search of taking any other actions under Clause (b) or (c), use weapons if anyone obstructs or opposes such acts with weapons.
- (e) Use necessary force or weapons in case any person who is committing or has committed a terrorist and destructive act is likely to run away or escape, or in circumstances when it appears that he cannot be arrested.
- (f) Use necessary force or weapons in the course of securing the release of any place or vehicle, aircraft, ship or any other means of transport forcibly captured by persons engaged in terrorist and destructive acts, or of the persons being held hostage by them in such means, so as to protect the life and person of such hostages from any harm or danger or other losses.
- (g) Use necessary force or weapons in case any person or group attacks any security personnel with or without weapons while on duty.
- (h) Use necessary force or weapons in case any person or group threatens or attempt to threaten by carrying any weapon with objective of harming the life and property of any security personnel working in any specific place.
- (i) Use necessary force or weapons in any case any person or group attacks with the objective of physically harming persons who are to be provided security personnel, or the common people or employees deputed on government duties who are being provided security by security personnel or government's good or security personnel.
- (j) Use necessary force or weapon in the event of an encounter with any armed person or group, or in event of obstruction to security personnel by any armed or unarmed person or group while performing the prescribed functions.
- (k) Use of necessary force or weapons by security personnel against persons or groups carrying arms or in areas where arms are hoarded or training conducted with the objective of committing terrorist and destructive acts.
- (l) Security personnel taking under their control and custody the weapons possessed by armed person or group, or disarming such armed persons or groups, according to need.
- (m) Subjecting any suspicious person or place to surveillance, or arresting such persons or locking up or cordoning off suspicious places if necessary.
- (n) Freezing for a specified period the bank account or passport of any person who on the basis of adequate and reasonable grounds is suspected of being engaged in terrorist and destructive acts.

6. Power to Requisition Property

His Majesty's Government or the Security Officer may requisition any private or government vehicles foodstuff, or other materials, goods or property needed for controlling and preventing terrorist and destructive acts, subject to payment of an appropriate compensation equivalent to their current value, or on a returnable basis.

7. Power to declare Terror –Affected areas and Terrorists

- (1) His Majesty's government may declare any area affected or likely to be affected by terrorist and destructive activities as terror-affected area.
- (2) His Majesty's government may declare any person, association, institution, organization or group involved in any crime which is punishable under this act as a terrorist.

(3) Notwithstanding anything contained in this section, terror affected areas shall be deemed to have been declared automatically when a state of emergency is declared or ordered under the 1990 constitution of the kingdom of Nepal.

8. Power to Prohibit Moving About with Arms or Ammunition

- (1) Notwithstanding anything contained in current law, in terror affected areas declared under Section 7, His Majesty's Government may issue an order prohibiting the carrying in person of arms or ammunition licensed under current law, or requiring such arms or ammunition to be deposited at the prescribed place, for specified period.
- (2) Arms or ammunition possessed by person who violates the order issued under sub section (1) shall be confiscated.

9. Power to keep under Preventive Detention

In case there exist appropriate grounds for believing that a person has to be stopped from doing anything that may cause a terrorist and destructive act, the Security Officer may issue an order to keep him under preventive detention up to 6 months in a humanly place. If there are reasonable grounds to believe that the person has to be prevented from committing any terrorist activities for longer than that, on the approval of the His Ministry the Government's Home Ministry, the Security Officer can issue additional six months order of preventive detention.

10. Penalties

- (1) In case the commission of any terrorist and destructive act which is deemed to be crime under this Act has led to the death of anyone, the main person who committed or caused to be committed or conspired to commit the crime, and the person who ordered its commission, shall be punished with life imprisonment along with confiscation of entire property.
- (2) In case a crime mentioned in this Act has been committed but no loss of life has occurred, the main person who committed or caused to be committed or conspired to commit the crime, shall be with life imprisonment.
- (3) In case anyone attempts to commit any crime mentioned in this Act, or instigates or compels others to commit such a crime, or assembles more than one person or forms a group to commit or cause the commission of such a crime, or orders to commit or cause the commission of such crime or participate in such an act with or without remuneration, or produces, distributes, keeps transport imports exports or give or takes in any way arms, bombs, explosives or poisonous substances, or conducts or causes to be conducted publicity with the objective of committing such an act, he shall be punished with imprisonment for a term ranging between five and 10 years, according to the extant of his crime.
- (4) In case any loss of property has been caused by a person who has committed a terrorist or destructive act, compensation therefore shall be realized and paid by confiscating his share of (ancestral) property, in case the

amount to be paid as compensation is not fully realized from his property, the outstanding payment shall be treated as equal to non payment of fine and converted to period of imprisonment according to current law.

- (5) Half of the punishment due to the perpetrator of any offense punishable under this Act shall be awarded to his accompish.
- (6) In case anyone willfully obstructed or opposes any search operation carried out under clause (b) or (c) of section 5 he shall be punish with imprisonment for a term not exceeding one month, or with fine not exceeding Rs. 500 or with both.

11. Judicial inquires to be conduced by keeping (the accused) in detention

Person accused of committing a crime under this Act shall ordinarily be kept in detention during judicial inquires into the case, depending on the gravity of the crime.

12. Right to hold Meetings and conference and exercise freedom of thought and expression

In areas declared as terror – affected under Section 7, there shall be no restriction on holding peaceful meetings and conferences without wearing arm exercising freedom of thought and expression, or traveling to or from any part of the Kingdom of Nepal in a manner not prejudicial to this Act.

13. Provision concerning monitoring and coordination

- (1) In case any person feels aggrieved at the actions taken or functions performed by the empowered the authority in the course of conducting investigations into a terrorist and destructive crime in exercise of the powers conferred on him under this Act, he, or any other person on his behalf, may submit a petition to the monitoring committee comprising of the following chairman and members;
 - (a) A person designated by HMG from among retried justices of the supreme Court- Chairman
 - (b) Secretary, Ministry of Defense- Member
 - (c) Secretary, Ministry of Home – Member
 - (d) Secretary, Ministry of Law- Justice and Parliamentary Affairs.- Member
 - (f) Deputy Attorney General, Attorney Gen.'s Office of the Kingdom of Nepal.- Member
- (2) The monitoring committee shall itself regulate its working procedure.
- (3) In case the Monitoring committee finds in the course of investigations into a petition filed under Sub-section (1) that the petitioner has actually suffered a wrong, it may give necessary advice to the concerned agency to redress it and also offer necessary suggestions to HMG on the problem and measure to resolve it.
- (4) Information about the actions taken and functions performed by the monitoring committee under sub-section (3) must be furnished to the state affairs committee of the House of Representatives.

- (5) There shall be a coordination committee with the concerned Regional Administrator or Chief District officer as convener and comprising the (Local) chiefs of the royal Nepali army, the Nepali Police, the Armed Police Force, the National Investigation, and other necessary coordinating (the activities) of the Royal Nepali Army, the Nepal police, the armed police, and other necessary governmental agencies to check or control terrorist and destructive acts within the area under their jurisdiction.
- (6) The coordination committee mentioned in sub-section (1) shall itself regulate its working procedure.

14. Confiscation

- (1) In case anyone commits a crime which is punishable under this act, any property, equipment or means used by him for the purpose, if any, shall also be confiscated.

Provided that in case any such property, equipment or means of transport has been used without the consent of its owner, it shall not be confiscated.

- (2) All means of propaganda, weapons cash and goods which have been intentionally used for committing an act which is deemed to be a crime under section 3, or for providing help to such acts shall be confiscated.
- (3) In case anyone is proved to have committed any act which is deemed to be a crime under this act by staying outside the kingdom of Nepal, his share of movable and immovable (ancestral) property within the kingdom of Nepal shall also be confiscated, in addition to punishing him as provided for in section 10.

15. Authority to hear cases and appeals

- (1) The Court formed or prescribed by HMG by notification in the Nepal Rajpatra (gazette) shall have the power to hear cases relating to offences under this act.
- (2) The court mentioned in sub-section (1) shall adopt the working procedure laid down in the 1974 Special Court Act while taking action on and disposing of cases under this Act.
- (3) Appeals against the verdicts given or final orders issued by the court mentioned in sub-section (1) may be filed at the Supreme Court.

16. Government to be plaintiff

His majesty's Government shall be the plaintiff in all cases under this act, and such cases shall be deemed to have been included in schedule 1 of the 1993 State Cases Act.

17. Special procedures

(1) Notwithstanding anything contained in current law in case any person who has committed any act which is considered to be a terrorist and destructive crime under this Act is not traced and has absconded a 15 days warrant with his complete description, as far as shall be no hindrance to taking action against such person under this Act even if he is not traced or arrested within the said time-limit.

(2) Any person, employee or security personnel may be used as an informer in a group engaged in terrorist and destructive acts. No such person, employee or security personnel shall be subjected to any punishment under current law on the ground of his involvement in that group.

(3) The identity of an informer shall be kept secret.

(4) notwithstanding anything contained in current law, if the accused implicated in a case on which action has been initiated under this Act reveals any important matter or evidence in such a manner as to convince his Majesty's Government, the police employee or any other criminal responsible for actual leadership in the crime, he may be established as a government witness, and if he is so established as a government witness, no punishment shall be inflicted on him under current law.

Provided that in case such an accused provides false written information or fictitious evidence, or is found to have acted out of malice or jealousy without any appropriate reason, and in case a claim is made for punishment by treating him as an accused, the authority hearing the case may punish him.

(5) Notwithstanding anything contained in current law, the accused implicated in a crime under this Act may be kept in police custody for a period not exceeding 60 days from the date of arrest to the purpose of investigation with the permission of the authority hearing the case.

18. Control over means of communication

His Majesty's Government may exercise control over such means of communication as correspondence, telephone and fax of persons or groups involved in terrorist and destructive activities.

19. Provision concerning Medical Expenses and compensation

(1) In case any police or security personnel who was been assigned the task of controlling or investigating into terrorist and destructive activities is crippled or dies. HMG shall pay an appropriate amount as medical expenses as well as compensation.

(2) HMG shall make arrangements relating to necessary treatment other relief benefits for person affected by or suffering from terrorist and destructive activities.

(3) HMG shall pay a reasonable compensation to the dependent family of an innocent common person who is killed as a result of action of a person in terrorist and destructive acts, or of security personnel.

(4) In case it is proved that this Act has been applied with malafide motives, the agreed party shall be paid a reasonable compensation in the course of judgment on the concerned case

20. Immunity for Actions taken with bonafide motives

No officer or any other person shall be liable to punishment for any act or work performed or attempted to be performed by him with bonafide motives under this Act or the rules framed here under.

21. No time-limit There shall be no time limit for filing cases under this Act.

22. Power to give rewards

HMG may give rewards which it deems to be appropriate to persons who captured or help to capture the person playing the main role in committing or causing the commission of terrorist and destructive act.

23. Delegation of Authority

HMG may delegate some of the powers vested it under this Act to any authority or with withdraw the power so delegated to any authority according to need.

24. Power to Frame Rules HMG may frame necessary rules in order to implement the objectives of this Act.

25. Saving clause

